

Appl. No. 09/786,080
Atty. Docket No. CM1905Q
Amdt. dated 11 June 2003
Reply to Office Action of January 14, 2003
Customer No. 27752

REMARKS

Claims 1-17 are pending in the present application. No additional claims fee is believed to be due. Claims 5, 12 and 14 have been amended. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested

The Office Action made reference to an earlier rejection under 35 USC 112, second paragraph that was responded to in a previous response and amendment. However, the Office Action failed to indicate whether the earlier rejection was overcome by the amendments submitted. Applicant believes the earlier amendments adequately addressed the issues and requests confirmation from the Office.

Rejection Under 35 USC 103(a) Over Daniels in view of Ouellette

Claims 1-17 have been rejected under 35 USC 103(a) as being unpatentable over Daniels et al. (U.S. 6,319,239) in view of Ouellette et al. (4,637,819). Applicants respectfully traverse this rejection because Daniels is not available as prior art against the present application under 35 USC 103(c).

All of the rejections of Claims 1-20 depend in whole or in part on Daniels et al. U.S. Patent 6,319,239. Daniels issued on November 20, 2001. The present application has a priority date of September 3, 1998. This means that Daniels only qualifies as prior art under 35 USC 102(e). Because the instant application was filed on February 28, 2001, subject matter that only qualifies as prior art under 35 U.S.C. § 102(e) cannot be used as the basis of a rejection under 35 U.S.C. § 103(a) if the (referenced) subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. 35 U.S.C. § 103(c).

Both the invention of the instant application and the invention of Daniels et al. were subject to an obligation of assignment to the Procter & Gamble Company at the time each invention was made. See the assignment document recorded on August 20, 2001 at Reel 012094 Frame 0186 with respect to the Daniels et al. patent, and the assignment document recorded on June 25, 2001 at Reel 011951 Frame 0604 with respect to the instant application. Both provide evidence of both the common ownership in the Procter & Gamble Company as well as the common obligation to assign at the time each invention was made. Since the current application has a filing date after November 29, 1999 (the effective date of 35 USC 103(c)), Applicants contend that Daniels et al. is not available as a reference under 35 USC 103(c).

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Therefore, the subject matter of the Daniels et al. patent is excluded by 35 U.S.C. § 103(c) from consideration under 35 U.S.C. § 103(a). Because all of the rejections under 35 U.S.C. § 103(a) depend on whole or in part on consideration of the Daniels et al. patent, they are improper and should be withdrawn. Accordingly, Applicant disavows any surrender deemed made in any prior response. Furthermore, any amendments and arguments made in response to Daniels are hereby disavowed.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC 103(a). Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-17.

Respectfully submitted,
Andreas Flohr

By 
Douglas McArthur
Agent for Applicant(s)
Registration No.
(513) 626-1459

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